

ISLAMIC LAW AS ADMINISTERED IN SARAWAK:  
A SURVEY

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## PREFACE

The law pertaining to the administration of muslim law has recently undergone a change with the introduction of the Syariah Court to replace the Native Courts in administrating muslim law. This change is brought about by the Majlis Islam (Incorp) (Amend) Ordinance 1978.

The object of this paper is therefore to see the extent of the scope of the Syariah Courts in Sarawak. This would be interesting as now muslim law and Malay customs will no longer be decided in the Native Courts. Hope is there that the muslim law be better administered through the amended Ordinance 1978 rather than through the controversial decisions made by the Native Courts.

In order therefore to analyse the extent and ambit of this Syariah Court, it is necessary to discuss the development of muslim law since James Brooke took over this state in 1841. This is to enable one to appreciate the existing decisions as made by the Native Courts. The scope of this paper therefore does not limit itself merely to the present day.

In going about with my project, I had conducted interviews with the staff of the District Native Court, Kuching and where I had a study of the cases decided in 1981 pertaining to Malay customs and muslim law. Interviews are also conducted with the Majlis Islam Sarawak as to the prospect of muslim law in Sarawak in the light of the new

## LIST OF CASES

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Abang Haji Zaini vs Abang Haji Rahim (1951) Supreme Court Report 3	14,17
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## CHAPTER I

### Introduction

Sarawak together with Sabah joined with the States in the Federation of Malaya to the formation of Malaysia on August 31st. 1963. Prior to the formation of Malaysia, Sarawak was a British colony since Vyner Brooke, the third Rajah in 1946 relinquished his sovereignty over the state. Since the coming of James Brooke in 1841, the laws as applicable was the customary law coupled with English law where appropriate by the Brookes'. This situation was further enhanced by the British when they colonised Sarawak in 1946 with the proper application of English laws and equity.<sup>1</sup>

Basically it can be said that the English laws and equity as applicable in Sarawak would not differ much from the application of English laws and equity in Peninsular Malaysia. However of significant here is the role of customary law which has a prominent place in Sarawak's legal system. This aspect of the law is of not much importance in Peninsular Malaysia.

*Thus the idea of the formation of Malaysia which was first proposed by the Prime Minister of Malaya, Tunku Abdul Rahman was accepted with enthusiasm and suspicion. The Cobbold Commission sent to make a survey as to the views and understanding of the people in Sarawak and Sabah on the proposal came with a positive result. However the people in these Borneo States demanded certain rights and privileges of*

the people be protected as a safeguard to their interests. One of these privileges demanded was the safeguard for customary laws which was jealously guarded by the state laws such as that found in the Native Customary Laws Ordinance, Cap. 51. Indeed, the Inter-Governmental Committee which was set up out of the recommendation of the Cobbold Commission stated in its report that the special position of the indigenous races be safeguarded. This special safeguard for indigenous races include the customary laws as then applicable to the natives in Sarawak.

"On the 31st. July, 1963, Tuanku Abdul Rahman and Harold MacMillan signed an agreement that Malaysia be brought into being by 31st. August 1963. Among other things provided for the transfer of sovereignty in North Borneo, Sarawak and Singapore by 31st August 1963 would include ..... detailed constitutional arrangement for North Borneo and Sarawak including safeguards for their special interests such as religious freedom, education, the position of the indigenous races ....."<sup>3</sup>

These safeguards were integrated as part of the Malaysia Bill passed in the then Malayan Parliament in 1963. In the Malaysia Bill, by virtue of sect. 36 of the Act, the 9th Schedule of the Constitution shall be amended by inserting at the end of list's II and III respectively the supplements to those lists set out in the Fourth Schedule to this Act. The Fourth Schedule of this Act was adopted in toto and became 'List II A-Supplement to state list for states of Sabah and Sarawak' of the present Constitution. Sect. 61(5) of the Act prescribes